

1 Q Okay, and, and this is the note from George Gardner
2 of December 3, 1991, which we previously discussed. And would
3 you look at the last two lines of the, of the note which says,
4 "Okay to transfer to anyone else you may wish to work with."

5 A Yes.

6 Q And my question is, in your view was your letter of
7 June 12, 1992, which is TBF Exhibit 248, consistent with the
8 thought expressed by George Gardner in the language I just
9 quote from his note of December 3, 1991?

10 A Yes.

11 Q Now, why didn't Exhibit 1 tell the FCC anything
12 about this effort of yours?

13 A Actually, I wrote this letter and never got a
14 response and I probably didn't even remember it whenever I
15 looked at Exhibit 1. And in any case, John Schauble asked me
16 questions about whether or not anything further had been done
17 on -- any further actions had been taken by Raystay and in
18 answer to his questions he, he, he prepared Exhibit 1 and when
19 I saw it I felt that Exhibit 1 was accurate.

20 Q Did you, did you initiate any other solicitations
21 like that in your letter of June 12, 1992?

22 A I don't recall creating any further solicitations
23 like this, but it's possible that I did.

24 Q Now, there came a time did there not when the FCC
25 granted Raystay's applications for a second extension of the

1 construction permits. Is that correct?

2 A Yes.

3 Q Would you turn to TBF Exhibit 252, please?

4 A Yes.

5 Q This is a letter dated September 23, 1992, from the
6 FCC to John Schauble. And my question to you is -- in
7 addition, would you also look at TBF Exhibit 253?

8 A Yes.

9 Q Which is a letter from Mr. Berfield to you dated
10 September 24, 1992. And my question is, did you receive from
11 Cohen & Berfield the documents that are TBF Exhibits 253 and
12 254 -- I'm sorry, 252 and 253?

13 A Yes.

14 Q And did you, did you read the Commission's letter
15 when you received it which is TBF Exhibit 252?

16 A Yes.

17 Q And did you notice that in that letter the
18 Commission said that it did not expect to grant any additional
19 extensions of time or any assignments of the construction
20 permits?

21 A I remember the statement about granting additional
22 extensions of time. I don't recall, I don't recall that I
23 remember remembering the statement about assignments of
24 construction permits.

25 Q Now, is it correct that, that by March 1993 there

1 | was still no construction by Raystay of the Lebanon or
2 | Lancaster low-power stations?

3 | A Yes.

4 | Q Now, would you turn to TBF Exhibit 254, please?

5 | A Yes.

6 | Q This is a letter dated February 4, 1993, to you from
7 | John Schauble. And my question is, did you receive this
8 | letter on or about February 1993?

9 | A I believe that I did, yes.

10 | Q And did you discuss the substance of the letter with
11 | Mr. Sandifer and/or George Gardner?

12 | A I believe that I made Lee Sandifer aware of the
13 | substance of the letter. I don't recall whether or not I made
14 | George Gardner aware of the substance of the letter.

15 | Q Now, do you know what decision was made by Raystay
16 | as to whether or not to file for further extension of the
17 | construction permits?

18 | A Yes.

19 | Q What, what was the decision?

20 | A Not to make a further extension application.

21 | Q Do, do you know who made that decision?

22 | A I don't know exactly, but my belief is that George
23 | Gardner made that decision.

24 | Q And, and who communicated the decision to you?

25 | A I don't recall who communicated that decision to me.

1 Q Would you turn, please, to TBF Exhibit 255?

2 A Yes.

3 Q This is a letter dated March 23, 1993, from John
4 Schauble to the Commission. And my question is, was it -- did
5 you communicate with Cohen & Berfield prior to the filing of
6 this letter with respect to Raystay's decision not to seek
7 further extensions?

8 A I believe that I called John Schauble and told him
9 that Raystay would not be making a further extension
10 application.

11 Q I take it that would have been part of your job
12 responsibility to make that contact?

13 A It would have, yes.

14 Q Now, Mr. Gardner, to your knowledge had there ever
15 been any plan by Raystay to sell TV-40 but to keep the
16 construction permits and to build and operate the Lebanon and
17 Lancaster stations instead?

18 MR. SCHAUBLE: Objection, Your Honor.

19 JUDGE CHACHKIN: Overruled.

20 MR. SCHAUBLE: TV-40 has not been sold to this day.

21 MR. EMMONS: No, the, the question, the question is
22 whether there was any ever any plan to do it and I will
23 concede and stipulate that it hasn't been sold.

24 JUDGE CHACHKIN: I'll overrule the objection.

25 MR. GARDNER: Okay. Could you ask the question

1 again?

2 BY MR. EMMONS:

3 Q Yes. To your knowledge was there ever any plan on
4 Raystay's part to sell TV-40 and build and operate the Lebanon
5 and Lancaster low-power stations instead?

6 A I'm not aware of any such plan.

7 Q Mr. Gardner, the -- there was some testimony earlier
8 last week about your declaration submitted in this proceeding
9 in June 1993 and that was TBF Exhibit 246. Do you want to
10 just turn to that just to get oriented, and I have one
11 question?

12 A Yes.

13 Q My question is, before that declaration was filed
14 with the FCC, did George Gardner ever question you about
15 anything you were saying in that declaration?

16 A I'm not aware that George Gardner ever questioned me
17 about anything I said in this declaration immediately
18 preceding the declaration.

19 Q Or proceeding its filing in other words?

20 A Or preceding its filing.

21 MR. EMMONS: No further questions, Your Honor.

22 JUDGE CHACHKIN: All right. Who for the Bureau is
23 -- go ahead, Mr. Schonman.

24 CROSS EXAMINATION

25 BY MR. SCHONMAN:

1 Q Thank you. Mr. Gardner, my name is Gary Schonman,
2 I'm co-counsel for the Mass-Media Bureau. I have a few
3 questions for you. I think the record will establish that
4 the, the construction permits for the Lebanon and Lancaster
5 stations were granted in July 1990 and that there was a
6 business plan developed in February 1991. That -- is that
7 accurate, sir?

8 A Based on what I have seen in these proceedings and
9 preparations for these proceedings, I, I would say yes.

10 Q And if -- well, if you have any questions, the, the
11 business plan that I'm referring to is at Bureau Exhibit
12 No. 509 and that's in Volume 7 --

13 A I'm not sure whether the --

14 Q Let me get that for you.

15 A 509 you said?

16 Q Yes. 509 is the business plan for the low-power
17 station and you'll notice the date there is February 1991.

18 A Okay. I'm not quite there yet.

19 MR. SCHAUBLE: May I assist the witness in --

20 MR. SCHONMAN: Certainly.

21 MR. GARDNER: 508 -- there's 509. Yes, and the date
22 is February 12th, 1991, yes.

23 BY MR. SCHONMAN:

24 Q My question for you, Mr. Gardner is, between the
25 date of the grant of the construction permits in July 1990 and

1 the date of this business plan was there any construction of
2 the four low-power stations?

3 A Any construction, you mean physical construction?

4 Q Yes.

5 A No.

6 Q Why?

7 A George Gardner did not start construction on them.

8 Q Do you know why George Gardner did not start
9 construction on them?

10 A I don't believe -- I believe that there had not been
11 a viable business plan created up until that point and
12 therefore he decided not to start construction till we had a
13 viable business plan.

14 Q And was this February 12, 1991 business plan, was
15 that a viable business plan?

16 A I was not involved in the preparation of this plan
17 -- this physical plan, nor the discussions that George Gardner
18 and Hal Etsell had as closely as they were involved in it.
19 So, while I feel this was a viable business plan, I don't
20 believe the specifics of it had been worked out to satisfy
21 George Gardner.

22 Q So, it's your understanding that George Gardner did
23 not consider the February 12, 1991 business plan to be a
24 viable business plan?

25 MR. SCHAUBLE: Objection, Your Honor. The witness

1 is testifying to what his understanding is and here I, I think
2 we're getting to the point now where counsel is asking the
3 witness to, to speculate as to the state of mind of George
4 Gardner.

5 MR. SCHONMAN: No, I'm not. I'm asking what his
6 understanding was.

7 JUDGE CHACHKIN: Did you have any conversations with
8 George Gardner concerning this business plan?

9 MR. GARDNER: If they were they were very short, but
10 it's possible that I did, yes.

11 JUDGE CHACHKIN: Well, what do you recall your
12 discussions consisted of? What did you talk about with
13 Mr. Gardner about this business plan?

14 MR. GARDNER: I recall that he and Hal Etsell were
15 working more closely on it than I was and that the two of them
16 were refining it to the point where they felt that they wanted
17 to go -- wanted to make a decision to go ahead and that that
18 decision had not been made yet.

19 JUDGE CHACHKIN: Were you privy to any information
20 as to why a decision was not made to go ahead with this
21 business plan?

22 MR. GARDNER: I would say no.

23 JUDGE CHACHKIN: Did you have any discussion with
24 Mr. Etsell concerning this -- the viability of this business
25 plan?

1 MR. GARDNER: Yes.

2 JUDGE CHACHKIN: Well, what did you discuss with him
3 about it?

4 MR. GARDNER: I generally remember that he and
5 myself agreed that we needed -- Raystay needed to get a -- to
6 get carriage of the LPTVs on the, the larger systems in their
7 coverage area and that to do that we needed -- Raystay needed
8 to put programming on that would be desirable for the
9 customers and to show the cable systems that they could make
10 more money putting the LPTVs on than other -- than some other
11 program service that they had the choice of.

12 JUDGE CHACHKIN: And it's your testimony -- did it
13 ever come a point where Raystay had accomplished these two
14 goals?

15 MR. GARDNER: I'm not aware that Raystay
16 accomplished those two goals.

17 JUDGE CHACHKIN: Go ahead, Mr. Schonman.

18 BY MR. SCHONMAN:

19 Q During the period between the date of the grant of
20 the construction permits and this February 12, 1991 business
21 plan, was any equipment ever ordered for the low-power
22 stations in Lebanon and Lancaster?

23 MR. SCHAUBLE: Objection, Your Honor. We're getting
24 repetitive. This is all -- I believe this witness has already
25 testified --

1 JUDGE CHACHKIN: I'll overrule the objection. It's
2 just a preliminary question.

3 MR. GARDNER: I, I don't believe that any equipment
4 was ever -- was ordered during that period.

5 BY MR. SCHONMAN:

6 Q Why not?

7 A George Gardner did not authorize anybody to order
8 it.

9 Q Do you have any understanding as to why George
10 Gardner did not so authorize this?

11 A It was my belief that he was waiting for a viable
12 business plan to be approved by him before he ordered the
13 equipment.

14 Q Mr. Gardner, you have before you the business plan,
15 Bureau Exhibit No. --

16 A Yes.

17 Q To your recollection, was that the only business
18 plan that was ever typewritten out and presented to George
19 Gardner for consideration?

20 A I don't recall ever seeing any typewritten business
21 plan prepared for George Gardner prior to my preparations for
22 these proceedings.

23 Q Other than this February 12, 1991 business plan?

24 A I don't recall seeing this February 12th, 1991
25 business plan prior to my preparations for these proceedings.

1 Q Did you have any knowledge of this business plan on
2 or about the time it was developed in February 1991?

3 A Hal Etsell and I had discussions about the business
4 plan that he was preparing for the LPTVs during his
5 involvement and that involvement included this February 1991
6 time period.

7 Q When the construction permits were initially granted
8 to Raystay, was Mr. Etsell the, the point man, so to speak,
9 for coordinating the development of these four stations?

10 A When the construction permits were granted?

11 Q Yes.

12 A I don't recall if he was or if somebody else was at
13 that time.

14 Q Did there come a time when Hal Etsell came to be in
15 charge of overseeing the development of these four stations?

16 A Yes.

17 Q And how long after the grant of the construction
18 permits did he assume that role?

19 A I don't recall the beginning of how Hal Etsell's
20 being in charge of overseeing the development of these
21 construction permits.

22 Q But there did come a time when he came to be in
23 charge of, of the project?

24 A Yes.

25 Q And for how long did he stay in charge of the low-

1 power project at Raystay?

2 A My belief was that he was in charge of the project
3 -- well, I don't know how long he stayed in charge of the
4 project. However, I know that he and I worked on it from time
5 to time in 1991 and into 1992.

6 Q When you say that the two of you worked on it in
7 1991 and on into 1992, what was the nature of the activities
8 that you're referring to when you say that you worked on it
9 together?

10 A Hal Etsell and I met frequently on many matters
11 during that time period.

12 Q I'm referring just to the, the low-power stations --

13 A Yes.

14 Q -- in Lebanon and Lancaster.

15 A Yes. Hal Etsell and I met frequently on many
16 matters during that time period and I recall discussions with
17 him about the LPTV construction permits and what was happening
18 with them during that time period.

19 Q What were the nature of those discussions?

20 A They basically focused on developing contacts -- not
21 contacts, deciding on a, a viable program service to provide
22 on the, the construction permits if they were put on the air
23 and how to get those once on the air to be carried by the
24 local cable, cable systems in their area.

25 Q Mr. Gardner, how did it happen that you understood

1 that Hal Etsell was in charge of developing the low-power
2 stations in Lebanon and Lancaster?

3 MR. SCHAUBLE: Is there a time frame to that
4 question?

5 MR. SCHONMAN: No.

6 MR. GARDNER: Hal Etsell is the type of person who
7 gets very involved in a project and I became aware that he was
8 very intensely involved with the LPTV construction permits. I
9 also believe at some point in time I received some nonwritten
10 communication indicating that Hal Etsell was working on the
11 project but I don't recall when or who I received it from.

12 JUDGE CHACHKIN: Is this appropriate for a
13 10-minute recess now? All right. We'll take a 10-minute
14 recess.

15 (Whereupon, a brief recess was taken from 10:50 a.m.
16 until 11:00 a.m.)

17 BY MR. SCHONMAN:

18 Q Mr. Gardner, when you say that Hal Etsell came to be
19 in charge of the low-power project in the Lebanon and
20 Lancaster stations, what, what do you mean that he was in
21 charge?

22 A I believe he was given responsibility for developing
23 the business plan and once the business plan was developed I,
24 I thought George Gardner probably would be the person that
25 would actually supervise physical construction.

1 Q In other words, the business plan had to come first
2 before any equipment would be ordered and before the stations
3 would be constructed. Is that the idea?

4 A That's -- that was my belief, yes.

5 Q What was that belief based on?

6 A I don't know that I can specifically say it was --
7 what it was based on except that was the belief that I had
8 based on my conversations with Hal Etsell and Lee Sandifer.

9 JUDGE CHACHKIN: Your testimony is that you never
10 saw this 1991 business plan in writing before this hearing
11 being --

12 MR. GARDNER: I don't recall seeing it before the
13 proceedings for this hearing.

14 JUDGE CHACHKIN: Are you aware that this business
15 plan had a specific timetable for development of the LPTVs?

16 MR. GARDNER: Yes, I, I see that here. Yes.

17 JUDGE CHACHKIN: Well, I understand you see that
18 here, but your testimony is that before you saw this before I
19 just showed it to you you were not aware of the timetable set
20 forth in this business plan for development of the LPTVs?

21 MR. GARDNER: I don't believe I was aware of the
22 specific timetable.

23 JUDGE CHACHKIN: And Mr. Etsell did not inform you
24 about the timetable which had been developed for the
25 development of the LPTVs?

1 MR. GARDNER: I don't recall being notified by Hal
2 Etsell of the specific timetable.

3 JUDGE CHACHKIN: Well, I'm having difficulty
4 understanding. Were you -- you, you testified that you
5 performed various -- you did various things in connection with
6 the LPTVs, that you visited the sites and you spoke to some
7 equipment suppliers. Were you doing this on your own or you
8 were doing this pursuant to directions from Mr. Etsell?

9 MR. GARDNER: I was doing it on my own.

10 JUDGE CHACHKIN: Well, what caused you to think that
11 you had the authority to do these things on your own when
12 Mr. Etsell was in charge of the project?

13 MR. GARDNER: First of all, I, I was the one that
14 conceived of the idea to apply for the construction permits in
15 the beginning so I wanted to -- after they were received I
16 wanted to find some way to get them on the air. And I knew
17 Hal Etsell was doing this type of thing and in my conversa-
18 tions with him I just took responsibility to do the things
19 that I did on my own. I kept him informed of what I was doing
20 but he never specifically asked me to do anything specific.

21 JUDGE CHACHKIN: And he never informed you about
22 the, the timetable which he had developed for these LPTVs?

23 MR. GARDNER: I don't recall being specifically
24 informed of the timetable, no.

25 JUDGE CHACHKIN: And you're -- by that I mean

1 | page 2 of the Bureau's exhibit. Do you have that?

2 | MR. GARDNER: Yes, I do.

3 | JUDGE CHACHKIN: And you notice the bottom half of
4 | the page there's a specific timetable and stating when things
5 | are to be done?

6 | MR. GARDNER: Yes, I see that.

7 | JUDGE CHACHKIN: Well, did Mr. Etsell -- for
8 | instance, February through May of 1991, it states here that
9 | cable operators were to be contacted and commitments obtained
10 | to carry the stations when they are active. Were you
11 | instructed by Mr. Etsell to, to do that, to make any of these
12 | contacts?

13 | MR. GARDNER: No, I was not.

14 | JUDGE CHACHKIN: Also it say during the same time
15 | period contact interested parties to create a joint venture in
16 | program development distribution company. Did Mr. Etsell
17 | instruction you to make any of these contacts?

18 | MR. GARDNER: No, he did not.

19 | JUDGE CHACHKIN: Also, the next thing is develop
20 | budgets and identify funding sources. Did you have any role
21 | in that?

22 | MR. GARDNER: No, I did not.

23 | JUDGE CHACHKIN: The next thing is obtain a firm
24 | commitment from Cable AdNet to sell advertising. Did you have
25 | anything to do with that?

1 MR. GARDNER: I had conversations with Cable AdNet
2 but they did not prove fruitful.

3 JUDGE CHACHKIN: Did you do this pursuant to
4 instructions from -- did this on your own or pursuant to
5 instructions from Mr. Etsell?

6 MR. GARDNER: I did this on my own.

7 JUDGE CHACHKIN: And then it states June through
8 July finalize funding sources. You had nothing to do with
9 that?

10 MR. GARDNER: No, sir.

11 JUDGE CHACHKIN: Identify and lease or purchase
12 transmitter sites. Did you have anything to do with that?

13 MR. GARDNER: I had the conversations that I had had
14 previous -- let's see. No. This was in 1991. I had not had
15 any conversations with the transmitter site owners at that --
16 when this business plan was created.

17 JUDGE CHACHKIN: Well, did Mr. Etsell instruct you
18 to make these contacts and enter into lease arrangements or --

19 MR. GARDNER: He did not.

20 JUDGE CHACHKIN: The next thing is design and order
21 towers and transmission equipment. Were you instructed by
22 Mr. Etsell to do any of these things?

23 MR. GARDNER: No, sir.

24 JUDGE CHACHKIN: Next thing is finalize program
25 package concept and hire personnel if required. Did

1 Mr. Etsell instruct you to do any of these things?

2 MR. GARDNER: Mr. Etsell asked me to contact certain
3 program suppliers in my -- since, since I had many contacts
4 with program suppliers since that was one of my main duties at
5 Raystay, but I did not have any contacts about hiring
6 personnel.

7 JUDGE CHACHKIN: What about finalizing program
8 package concept? Did you do anything of that nature?

9 MR. GARDNER: I don't believe that any package
10 program concept was ever finalized.

11 JUDGE CHACHKIN: Now, according to this timetable,
12 between August through September all the activities which
13 we've just discussed were to be finalized. Were you aware of
14 such a timetable?

15 MR. GARDNER: I was not.

16 JUDGE CHACHKIN: And during the period of October
17 through November 1991 the timetable states to contact
18 potential advertisers. Were you instructed by Mr. Etsell at
19 any time to contact potential advertisers?

20 MR. GARDNER: No, sir.

21 JUDGE CHACHKIN: And also it says to begin marketing
22 in public relations and finalize program contracts. Were you
23 instructed by Mr. Etsell at any time to do any of these
24 things?

25 MR. GARDNER: No, sir.

1 JUDGE CHACHKIN: And in December of 1991 it says
2 turn on stations. Now, did you have any knowledge that, that
3 Raystay intended to turn on stations in December 1991?

4 MR. GARDNER: I had no knowledge that Raystay could
5 turn on the stations in December of 1991.

6 JUDGE CHACHKIN: So, apparently in your discussions
7 with Mr. Etsell you were not informed concerning this
8 timetable at all. Is that your testimony?

9 MR. GARDNER: Yes, sir.

10 JUDGE CHACHKIN: I notice you previously testified,
11 I believe you did, in connection with cross-examination by
12 Mr. Emmons that you were unaware of any business plan being
13 formulated.

14 MR. GARDNER: Written business plan.

15 JUDGE CHACHKIN: So, you were unaware of this
16 written business plan when you testified that -- when
17 Mr. Emmons asked you those questions you were unaware of this
18 business plan of December -- of February 12, 1991?

19 MR. GARDNER: Yes, sir.

20 JUDGE CHACHKIN: Go ahead, Mr. Schonman.

21 BY MR. SCHONMAN:

22 Q Mr. Gardner, after the first quarter of 1991, was it
23 your belief that Hal Etsell was still in charge of the
24 low-power project?

25 A (No audible response.)

1 Q And when I say low-power project, I mean the project
2 of construction and operating the low-power stations at
3 Lancaster and Lebanon.

4 A I believe that Hal Etsell was continuing to work on
5 it. It was my belief that he was in charge of it, yes.

6 Q That he was in charge?

7 A That he was in charge, yes.

8 Q What is that belief based on?

9 A The discussions that I had with him and the fact
10 that I was not specifically informed that anybody else was in
11 charge of it.

12 Q Were you ever specifically informed that anyone at
13 any time was in charge of Raystay's project of constructing
14 and operating the low-power stations at Lebanon and Lancaster?

15 A I believe at some point in time, and I don't recall
16 what time that is, that Lee Sandifer informed me that he was
17 taking over the duties of working on the low-power -- the --
18 all, all of Raystay's low-power TV operations.

19 Q Approximately when was that?

20 A I, I don't recall.

21 Q Do you remember what year it was?

22 A I believe it was in 1992.

23 Q From whom was he taking over charge?

24 A My, my belief was that he was taking it over from
25 Hal Etsell.

1 JUDGE CHACHKIN: Would you, would you tell me this?
2 Why when Mr. Schauble called you to ask you about the, the --
3 what, what had been done in connection with construction did
4 you not refer Mr. Schauble to Mr. Etsell since he was in
5 charge of the, of the cable project?

6 MR. GARDNER: The LPTV project?

7 JUDGE CHACHKIN: The LPTV, yes.

8 MR. GARDNER: In 1991?

9 JUDGE CHACHKIN: Well, when he --

10 MR. GARDNER: The first time?

11 JUDGE CHACHKIN: First time, yes. The first time,
12 December 1991, why didn't you tell him to call Mr. Etsell, he
13 was in charge and presumably he would know what was going on.
14 Why, why didn't, why didn't you tell him that? Or did you
15 tell him that?

16 MR. GARDNER: I don't recall that I told him that.
17 And the questions that John Schauble asked of me I felt that I
18 was knowledgeable to answer.

19 JUDGE CHACHKIN: Was there any discussion with you
20 and Mr. Schauble concerning Mr. Etsell's role in developing
21 the LPTVs?

22 MR. GARDNER: I don't recall that there was any
23 discussion of that.

24 JUDGE CHACHKIN: And you didn't tell Mr. Schauble
25 that Mr. Etsell was in charge of that project?

1 MR. GARDNER: I don't recall telling John Schauble
2 that Mr. Etsell was in charge of that project.

3 JUDGE CHACHKIN: Is there some reason why you did
4 not?

5 MR. GARDNER: I felt that I had enough knowledge to
6 answer John Schauble's questions at that point. The questions
7 that he asked of me I didn't feel uncomfortable answering.

8 JUDGE CHACHKIN: Go ahead, Mr. Schonman.

9 BY MR. SCHONMAN:

10 Q Mr. Gardner, was it your understanding that Hal
11 Etsell was in charge of the low-power project between the time
12 of the first extension request and the time that Raystay made
13 application a second time for an extension?

14 A I believe during that time period is when I came to
15 understand that Lee Sandifer was taking more responsibility
16 for the project and that Hal Etsell was taking less.

17 Q Was it your understanding that Sandifer came to be
18 in charge of the project?

19 A During that time period -- at some point during that
20 time

21 Q Yes. Between the two extension requests. And you
22 testified that he came to have more of a role. I'm asking you
23 was he --

24 A Yes.

25 Q -- was he in charge?

1 A Yes. I believe he came to be in charge of the
2 project. I believe it was during that time period, but it
3 could have been at some other point. I, I, I don't really
4 recall when I came to believe that he had full control of that
5 project.

6 Q Is it your testimony that you believe Hal Etsell to
7 be in charge of the low-power project and then Sandifer took
8 over from Etsell?

9 A Yes.

10 Q Can you give me an approximate time when that
11 transition happened?

12 A I, I really can't recall even an approximate time
13 when that transition came. I believe it was between the time
14 of the first application for extension and the time of the
15 second application for extension.

16 Q So, by the time that the second round of extensions
17 were requested of the Commission, Lee Sandifer was in charge?

18 A I believe that he was, yes.

19 Q When Mr. Schauble called you to ask you about filing
20 the second set of extension applications, why didn't you refer
21 Mr. Schauble to Mr. Sandifer?

22 A Lee Sandifer and I have worked closely together and
23 on the construction permits he was keeping me informed as to
24 what he was doing and I didn't believe that there had been any
25 changes from the first application for extension until the

1 second application for extension.

2 Q Why didn't you refer Mr. Schauble to Mr. Sandifer?

3 A I felt that I could answer John Schauble's questions
4 accurately.

5 JUDGE CHACHKIN: Is Mr. Etsell going to testify in
6 this proceeding?

7 MR. COHEN: His deposition was admitted, Your Honor.

8 JUDGE CHACHKIN: Was he ever asked about this
9 business plan?

10 MR. COHEN: Oh, yes.

11 MR. EMMONS: Yes, Your Honor, a lot of extensive
12 testimony about that and about his involvement in the project.

13 JUDGE CHACHKIN: All right.

14 MR. COHEN: Yeah. There's a lot in there.

15 BY MR. SCHONMAN:

16 Q Mr. Gardner, when you signed the applications for
17 the construction permits back in '89, you were in charge of
18 the project of obtaining the four low-power stations?

19 A There were five, yes.

20 Q All right. I'm, I'm referring -- but I'm referring
21 just to the Lebanon and Lancaster stations. You were in
22 charge of the project of getting those?

23 A Yes.

24 Q And when the construction permits were granted, were
25 you still in charge of those four stations?

1 A I don't know that there was any decision about who
2 was in charge when they were granted. However, George Gardner
3 was aware that they had been granted and he was very involved
4 in low-power TV at that point and it was my understanding that
5 he took over the project to decide what to do with them.

6 Q When the construction permits were granted, what was
7 your role, if any, with respect to the four stations? What
8 did you understand your role to be?

9 A My role -- certainly, one of my roles was to keep
10 the paperwork current at the Commission. And other than that,
11 I don't believe I had any role in the LPTV construction
12 permits other than the ones that I chose to take on myself.

13 Q All right. I want to make sure I understand the,
14 the time line here. Is it accurate to say that you were in
15 charge of the, of the low-power project at the time that the
16 applications for the construction permits were filed in 1989?
17 Is that accurate?

18 A Yes.

19 Q Is it also accurate to say that initially after the
20 grant of the construction permits no one was in charge?

21 A I would say that that's not accurate.

22 Q Who was in charge?

23 A George Gardner.

24 Q Did there come a point where George Gardner
25 delegated the responsibility of getting these stations on the